

[*McGlynn v. Pulsair Inc.*, 93-CAA-2 \(Sec'y June 28, 1993\)](#)

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DATE: June 28, 1993
CASE NO. 93-CAA-00002

IN THE MATTER OF

EDWARD T. McGLYNN,

COMPLAINANT,

v.

PULSAIR INCORPORATED,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT

Before me for review is the Recommended Order of Dismissal with Prejudice (R.D. and O.) of the Administrative Law Judge (ALJ) in this case arising under the employee protection provisions of the Safe Drinking Water Act, 42 U.S.C. § 300j-9(i) (SDW); Water Pollution Control Act, 33 U.S.C. § 1367 (WPC); Toxic Substances Control Act, 42 U.S.C. § 6971 (TSC); Clean Air Act, 42 U.S.C. § 7622 (CAA); and the Energy Reorganization Act of 1982, as amended, 42 U.S.C. § 5851 (ERA).

The ALJ indicated the parties' submission of a "Settlement Agreement, General Release and Waiver of Right to Sue" (settlement) and recommended granting Complainant's "Notice of Voluntary Dismissal with Prejudice" under Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure and in accordance with the terms of the settlement. However, the ALJ did not indicate any review of the terms of the settlement.

In cases arising under the employee protection provisions of the above-referenced statutes, and the implementing regulations at 29 C.F.R. Part 24, it would be error to dismiss a case which has been settled without reviewing the terms of the settlement agreement to determine whether they are fair, adequate and reasonable. See 29 C.F.R. § 24.6(a) (1992); *Macktal v. Secretary*

v. United States Department of Labor, 885 F.2d 551, 556 (9th Cir. 1989).

I note that this agreement may encompass matters arising under various laws, other than SDW, WPC, TSC, CAA, and ERA. My authority over settlement agreements is limited to such statutes as are within my jurisdiction and is defined by the applicable statute. See *Goese v. Ebasco Services, Inc.*, Case No. 88-ERA-25, Sec. Ord. Approving Settlement and Dismissing Case, Dec. 8, 1988; *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, and cases cited therein. Accordingly, I will limit my review to determining whether the terms of the settlement are fair, adequate and reasonable to settle Complainant's allegations that Respondent violated the SDW, WPC, TSC, CAA and ERA. Based on a careful review of the terms of the settlement, I find that the settlement agreement is fair, adequate and reasonable, as clarified and construed herein.

Paragraph 3 of the settlement provides that Complainant shall keep the terms of the settlement confidential. I construe this confidentiality provision as not restricting any disclosure where required by law. Additionally, paragraph 13 provides that the laws of Florida shall govern this settlement agreement. This provision is interpreted as not limiting the authority of the Secretary or the United States district court under the applicable statutes and regulations.

As construed herein, I approve the settlement agreement and dismiss the complaint with prejudice. See Notice of Voluntary Dismissal with Prejudice. [1]

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] It is not necessary to employ Rule 41(a)(1)(ii) to dismiss this case, as the applicable statutes provide for dismissal of a case by the Secretary upon approval of the terms of a fully executed settlement agreement between the parties.